

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Norfolk Division

JOE LEE FULGHAM, (#170034)

Petitioner,

v.

CIVIL ACTION NO. 2:20cv167

ROBERT F. McDONNELL, et al.,

Respondents.

DISMISSAL ORDER

This matter was initiated by petition for a writ of habeas corpus under 28 U.S.C. § 2254.

Petitioner Joe Lee Fulgham is a frequent filer of habeas actions pursuant to 28 U.S.C. § 2254 and § 2241 in this Court; this petition again challenges his involuntary civil commitment as a sexually violent predator under Virginia Code § 37.2-900. As with his earlier submissions, Petitioner fails to allege any facts which would permit the Court to find that Petitioner has exhausted his claims. “Exhaustion is a matter of comity to the state courts and failure to exhaust requires dismissal from federal court so that a petitioner may present his claims to a state court.” *Sparrow v. Director*, 439 F. Supp. 2d 584, 587 (E.D. Va. 2006).

The matter was referred to a United States Magistrate Judge for report and recommendation pursuant to the provisions of 28 U.S.C. § 636(b)(1)(B) and (C) and Rule 72 of the Rules of the United States District Court for the Eastern District of Virginia. The Report and Recommendation (ECF No. 13) was entered May 28, 2020, and recommends dismissal of the petition without prejudice to his right to present his claims at a later date after he has exhausted his state court remedies. Petitioner was advised of his right to file written objections to the findings and

recommendations made by the Magistrate Judge. The Court received submissions from Petitioner (ECF Nos. 14, 15), and these have been construed as Objections to the Report and Recommendation.

This Court, having reviewed the record and examined the objections filed by Petitioner to the Report and Recommendation, and having made *de novo* findings with respect to the portions objected to, adopts and approves the findings and recommendations set forth in the Report and Recommendation entered May 28, 2020. It is, therefore, **ORDERED** that Petitioner's petition be **DENIED and DISMISSED** without prejudice.

Finding that the basis for dismissal of Petitioner's § 2254 petition is not debatable, and alternatively finding that Petitioner has not made a "substantial showing of the denial of a constitutional right," a certificate of appealability is **DENIED**. 28 U.S.C. § 2253(c); *see* Rules Gov. § 2254 Cases in U.S. Dist. Cts. 11(a); *Miller-El v. Cockrell*, 537 U.S. 322, 335–38 (2003); *Slack v. McDaniel*, 529 U.S. 473, 483–85 (2000).

Petitioner is **ADVISED** that because a certificate of appealability is denied by this Court, he may seek a certificate from the United States Court of Appeals for the Fourth Circuit. Fed. Rule App. Proc. 22(b); Rules Gov. § 2254 Cases in U.S. Dist. Cts. 11(a). **If Petitioner intends to seek a certificate of appealability from the Fourth Circuit, he must do so within thirty (30) days from the date of this Order. Petitioner may seek such a certificate by filing a written notice of appeal with the Clerk of the United States District Court, United States Courthouse, 600 Granby Street, Norfolk, Virginia 23510.**

The Clerk is directed to please mail a copy of this Dismissal Order to Petitioner Joe Lee Fulgham. A copy of the Dismissal Order shall also be served on the Respondent and the Attorney General by CM/ECF pursuant to their Agreement on Acceptance of Service with the Court.

/s/

Arenda L. Wright Allen
United States District Judge

Norfolk, Virginia
July 2, 2020